CHUNG LAI HENG (m.w.) v. MURUGAPPA CHETTIAR.

[App. Civ. Juris. (Brown, J.) October 16, 1952]

[Singapore — District Court Appeal No. 16 of 1952]

Landlord and tenant — Possession — Breach of Municipal Ordinance — Control of Rent Ordinance, 1947, s. 14(1)(k).

The appellant is the landlord of premises of which the respondent is the tenant. She claimed possession on the ground that the tenant had committed a breach of the Municipal Ordinance by erecting two sheds for which offence she had been fined. The learned District Judge refused to make an order because he took the view that under section 14(k) of the Control of Rent Ordinance, the landlord must be exposed to the penalty, fine or forfeiture at the date of expiry of the notice to quit.

Held on appeal: (1) the true interpretation of section 14(k) is that the tenant loses his protection if he has committed a breach of such a nature that it exposes his landlord to any penalty, fine or forfeiture; (2) on the evidence before the Court, it had not been proved that the respondent erected the sheds.

Case referred to :—

(1) *Fernandez v. Murugiah* (1950) M.L.J. 83.

DISTRICT COURT APPEAL.

C. F. J. Ess for the appellant.

L. A. J. Smith for the respondent.

Cur. Adv. Vult.

Brown, J. : — Section 14 of the Control of Rent Ordinance 1947 provides that no order or judgment for the recovery of possession shall be made except, *inter alia :—*

"(k) where the tenant or any other person occupying the premises under him has committed a breach of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture."

The appellant was the plaintiff in the Court below and is the landlord of No. 17, Owen Road. She claimed possession under para. (k) of section 14. It was proved that on 14 August 1950 she was fined $50 under section 144(7) (b) of the Municipal Ordinance in respect of the erection upon the premises of two sheds while the premises were in the occupation of the tenant, who is the respondent in this appeal. On September 6, 1950 she had given the respondent notice to quit on 31st October, and before the expiration of the notice the sheds had been demolished.

The learned District Judge refused to make an order for possession because he took the view that in order to invoke the sub-section the landlord must be exposed to the penalty, fine or forfeiture at the date of the expiry of the notice to quit. He based his view upon the following passage in the Judgment in *Fernandez v. Murugiah*[1] : "Whether the case falls within one of the exceptions (to section 14) or not depends on the state of facts at the moment when the previous tenancy is determined." But the short question here is whether the words in the sub-section "which exposes the landlord to any penalty, fine or forfeiture" merely qualify the earlier words "has committed a breach" or whether they impose a requirement that upon the operative date, *viz.*, when the date on which the tenancy is determined, the landlord must be exposed to any penalty, fine or forfeiture.

It seems to me that the view of construction taken by the learned District Judge would render the section nugatory. If the landlord must be exposed to the penalty, fine, or forfeiture at the date of the expiry of the notice to quit a tenant, having committed the breach and having been served with a notice to quit terminating the contractual tenancy, could cease committing the breach before the expiry of the notice, and having become a statutory tenant under section 16 he could commit a further breach and be given a further notice; and before the expiry of that notice he could cease the breach and claim the protection of the sub-section. This could go on *'ad infinitum'*.

I think that the words "which exposes the landlord to any penalty, fine or forfeiture" qualify the earlier words. I think that the true construction is that not every breach of the Municipal Ordinance on the part of a tenant will deprive him of the protection afforded by section 14. He is only to be deprived of that protection if he has committed a breach of such a nature that it exposes his landlord to any penalty, fine, or forfeiture.

I therefore think that the learned District Judge was wrong in refusing to make an order for possession upon that ground.

[The rest of the judgment dealt with the facts which are considered unnecessary for the purpose of this report. — *Ed. M.L.J.*].

Appeal allowed.

REG. v. GEORGE E. LEE.

[App. Crim. Juris. (Brown, J.) October 24, 1952]

[Singapore — Special Case No. 2 of 1952]

Municipal Ordinance (Cap. 133), s. 144(7) and (11)(e) — Whether change of user in dwelling premises is an offence thereunder.

This was a Special Case stated and argued before the High Court. The defendant had erected an annexe to his house as a recreation room but subsequently used it as a store-room in connexion with his business. He was prosecuted under section 144(7) of the Municipal Ordinance for "commencing building operations involving the erection of a building." The prosecution relied on section 144(11)(e) which provides that a person shall be deemed to erect a building who "converts to other

purposes a house originally constructed as a dwelling-house."

Held: the mere change of user, without any kind of construction work cannot be deemed to be erecting a building. Section 144(11)(e) must be read in conjunction with section 144(7).

SPECIAL CASE STATED.

Dr. C. H. Withers Payne for the City Council.

Claude Da Silva (*Sandy G. Pillay* with him) for the defendant.

Cur. Adv. Vult.

Brown, J. : — The defendant was convicted of commencing building operations contrary to section 144(7) of the Municipal Ordinance. The facts proved were that the defendant had submitted a plan to the Municipal authorities for a proposed Recreation Room at his house in Grange Road which was approved. The building was erected, and a Certificate of Fitness was issued. Subsequently the defendant used the building for the storage of crates. No apparatus for recreation was in the building, although the plan which had been approved shewed that the three rooms of which the building consisted were to be used as a card room, billiard room, and ping pong room. The prosecution relied upon section 144(11)(e). It was not suggested that the defendant had made any structural alteration; and the case against him depended upon alteration of user. It was said that he had used the building for a purpose other than a dwelling-house. The evidence was that 70 to 80 crates, believed to be motor-car spare parts, were stored in the building.

The learned Magistrate, acting under the provisions of section 317 Criminal Procedure Code, reserved for the consideration of this Court the question of whether the conviction was correct in point of law. For the purpose of determining this question I accept as a fact that the building was being used as a godown in connexion with the defendant's business, and not as a dwelling-house.

Section 144(7) makes it an offence to "commence any building operations involving the erection of a building ....."; and by sub-section (11)(e) a person shall be deemed to erect a building who "converts to other purposes a house originally constructed as a dwelling-house." The first question that arises is whether this building was constructed as a dwelling-house. The approved plan is headed "proposed recreation room at M.C. No. 120 Grange Road for Mr. George Lee." This building is sub-divided on the plan into the three rooms designated "card room," "billiard room," and "ping pong room." There is an endorsement by the defendant promising that the building will be used by him only. In the absence of any definition of the term "dwelling-house" I think the learned Magistrate was right to consider the plan in order to ascertain the purpose for which this building was constructed. Clearly it was constructed for the purpose of being an annexe to the dwelling-house, which lacked the amenities which this building, according to the plan, would furnish. The fact that it was detached from the main house, in my opinion, is immaterial. I agree with the learned Magistrate that the building was constructed as a dwelling-house, in order to be a part of the main house though detached from it, and that it falls to be considered under sub-section (11)(e).

The next question to be considered is whether an offence can be committed under section 144(7) if there has been no structural alteration or any form of building operation at all. It is contended on behalf of the Municipality that the effect of sub-section (11)(e) on section 144(7) is to make it an offence merely to use the building for a purpose other than a dwelling-house. But the offence under section 144(7) consists in "commencing building operations." Then follow the words "involving the erection of a building." Sub-section (11) relates exclusively to the latter. It leaves untouched the words "no person shall commence any building operations." In my opinion sub-section (11) sets out eight forms of building activity which, for the purpose of the section, are to be deemed to constitute erecting a building; and I cannot think that item (e) means that mere change of user, without any kind of construction work, is to be deemed to be erecting a building.

Reading sub-section (11)(e) in conjunction with sub-section (7) I think that sub-section (7) can only be paraphrased as follows :—

> "No person shall commence any building operations involving the conversion to other purposes of a house originally constructed as a dwelling-house."

It seems to me that to construe sub-section (11)(e) as meaning that no structural or physical conversion need have taken place would be to ignore the words "commence any building operations" in sub-section (7). But these are the operative words. They are the words under which the charge was laid. And these words are left untouched by sub-section (11)(e). The point is that there must be a "building operation." Here there was none.

In my opinion the learned Magistrate's determination of this question was wrong and must be reversed and the conviction quashed.

Conviction quashed.